when it was unknown to avoid a specialty, *Faulder* v. *Silk* (1811) 3 Campb. 126; but insanity could not be pleaded in avoidance of a contract made by one dealing with the insane person in good faith and with no knowledge of the latter's condition, *Brown* v. *Jaddrell* (1827) 1 Moody & M. 105. In the last case, however, the plea was heard in equity and the incompetent might there avoid his contract upon a return of the consideration, *Niell* v. *Morely*, supra; and when he was compelled to go into equity for additional relief from his deed, by the same rule of equity a return of the consideration was required, *Price* v. *Berrington*, supra.

Littleton's rule has not been generally adopted in this country, 2 Kent's Com. § 451; Story's Eq. Jur. § 225 and note. It would therefore seem that its outgrowth, the rule requiring a return of the consideration, should not have been more generally adopted; but that historically considered, the incompetent should have been allowed to avoid his deed at law without first returning the consideration, leaving to the other party a right to afterwards recover any portion of the consideration remaining in the incompetent's hands, *Matthieson* v. *McMahon* (1876) 38 N. J. L. 544, or to his action in quasi-contract in a proper case, Keener on Quasi-Contracts 20. See *Shaw* v. *Boyd* (Pa. 1819) 5 Serg. & R. 309.

INJUNCTIONS TO RESTRAIN TICKET BROKERS.—For some years the railroad companies have been waging a war of extermination against the ticket brokers. In several States statutes have been passed to force them out of business, but more often the courts have been appealed to. In 1897 the Circuit Court for the Northern District of Tennessee granted an injunction restraining certain brokers from buying and selling unused portions of reduced rate tickets, *Nashville, C. & St. L. R. Co.* v. *McConnell*, 82 Fed. 65, and since then there have been several other cases decided by courts of inferior jurisdiction, though with conflicting results. *Railroad* v. *Kinner* (D. C. 1902) 47 Ohio Law Bull. 760; *Hudson R. R. Co.* v. *Reeves* (N. Y. 1903) 41 Misc. 490. The first time the question seems to have been before an appellate court was in a recent case in Missouri, *Schubach* v. *McDonald* (1903) 78 S. W. 1020. The railroads alleged that they intended to issue special rate excursion tickets to the St. Louis Exposition which by their terms were to be void if transferred, and it appeared by the answer of the brokers that they already had in their possession unused portions of excursion tickets which they were offering for sale. The court restrained the sale of these existing tickets, the buying and selling of other existing tickets, and the buying and selling of the tickets that may be issued during the Exposition, on the ground that each ticket created a property right in the railroads which, under the circumstances equity should protect. In *Nashville, etc. R. Co.* v. *McConnell*, supra, the injunction was granted on the ground that the right of the railroad to do business was interfered with, while in *Hudson R. R. Co.* v. *Reeves*, supra, the judge held that no wrong was threatened. There seems to be no doubt, however, that a fraud is committed when a name is forged in order to obtain

services from a railroad which it is not liable to render and it is clear that the brokers are parties to that fraud, and should be restrained. The interest in the cases lies in the grounds on which the injunctions have been granted. The McConnell case rests on a ground well recognized in the law, 2 COLUMBIA LAW REVIEW 37, 552, and fully adequate to sustain the relief sought, while the McDonald case seems to break down at the vital point. The right to do business is a right now existent and any act which invades or threatens an invasion of that right is a wrong sufficient to give the court jurisdiction when the act is threatened; but if the right which is to be protected is created by the sale of the ticket, no act could invade that right, nor could there be a threatened invasion of it until it came into existence. Neither equity nor law could have any jurisdiction until the contract was made, and the injunction would fail almost entirely to accomplish the purpose for which it was issued. The court in the principal case attempts to dispose of this difficulty by saying the injunction will take effect whenever the tickets may be issued, but the dissenting judges point out that this is rendering judgment not only before the cause of action comes before the court, but before it comes into existence.